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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,533

10/16/2003

Gerald Duhamel

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EXAMINER

LAYNO, BENJAMIN

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,533

Applicant(s)

DUHAMEL ET AL.

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments filed 04/11/06 have been fully considered but they are not persuasive. The rejections follow.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Perkins 873'.

The patent to Perkins 873' discloses a method of playing a game of chance. To play Perkins 873' game, a first wager (ante 16) is received from a player, and a second wager (insurance 22) is received from a player. A first set of game indicia is distributed (each player receives two cards dealt face down, and a single community card 18 is dealt face up 20, col. 3, lines 35-36). The first set of game indicia is evaluated according to a first set of game rules to determine a first game outcome (The player's two cards plus the community card makes a three-card hand. Each player decides, based on these three cards, whether to fold or to wager an additional unit, col. 3, lines 43-46), which are 5-card poker game rules. If the first game outcome is a losing outcome, insurance is provided by distributing at least one second set of game indicia (If the 5-card hand of the player is a losing hand and if the player paid the insurance fee 22 at the beginning of game, then the player may purchase a sixth card "Bonus 6", col. 4, lines 5-11) and evaluating the second set of game indicia according to a second set of game rules (A player with a six-card hand mentally forms the best possible 5-card

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hand contained within the six cards, col. 4, lines 22-23), which are 6-card poker game rules. The first set of game indicia is evaluated according to a third set of game rules (A player does not have to beat the hands of other players or have to beat a hand of the dealer. A player wins if the player's hand equals or exceeds a preselected rank which is preferably a pair of 6's according to pay table #1, col. 4, lines 39-59). Thus, Perkins 873' game is conducted to its completion according to the second and third sets of game rules. If a player decides to continue to play according to the first set of game rules (5-card poker rules, col. 3, line 46 to col. 4, line 4), and has a winning outcome, the player is awarded a prize (col. 4, lines 31-38).

Response to Arguments

The Applicant has argued that Perkins 873' does **not** describe a game wherein the player may place a wager comprising an insurance option. The Examiner maintains his position that Perkins 873' does have an insurance option 22, see col. 3, lines 1-8 and see col. 4, lines 5-11.

The Applicant has also argued that Perkins 873' does not a game where, upon occurrence of a losing outcome according to a first set of game rules, the player is provided with a second set of game indicia which is evaluated according to a second set of game rules, and the player's first set of game indicia is evaluated according to a third set of game rules. The Examiner maintains his position that three sets of game rules are played during Perkins 873' game, a three-card poker game, a five-card poker game and a six-card poker game:

Claimed Invention	Perkins 873'
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Evaluating said at least one first set of game indicia according to a first set of game rules	The player's two cards plus the community card makes a three-card hand. Each player decides, based on these three cards, whether to fold or to wager an additional unit, col. 3, lines 44-47.
Distributing a second set of game indicia and evaluating said at least one second set of game indicia according to a second set of game rules	The player is dealt a third card and a fourth card, col. 3, lines 55-66. The community card combined with the four cards in the player's hand form a five-card poker hand and a five-card poker game is played, col. 4, lines 1-4.
Evaluating said at least one first set of game indicia according to at least one third set of game rules.	If the five-card hand (which inherently includes the initial three card hand) of the player is a losing hand, and if the player paid the insurance fee 22, then the player may purchase a sixth card, and a six-card poker game is played wherein a player with a six-card hand mentally forms the best possible five-card poker hand, col. 4, lines 5-23.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

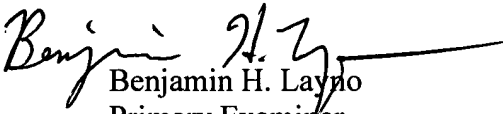
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl